

State of South Dakota

EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

346T0510

SENATE BILL NO. 178

Introduced by: Senators Krebs, Hunhoff (Jean), and Lederman and Representatives Brunner and Hunt

1 FOR AN ACT ENTITLED, An Act to amend the criteria for construction manager engagement.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 5-18B-43 be amended to read as follows:

4 5-18B-43. Unless the construction manager-agent is an employee of the purchasing agency
5 and provides the construction management services pursuant to such employment, no
6 purchasing agency may engage the services of a construction manager except as follows:

7 (1) The purchasing agency shall first make the following determinations:

8 (a) That it is in the public interest to utilize the services of a construction
9 manager; and

10 (b) That the construction management services would not unreasonably duplicate
11 and would be in addition to the normal scope of separate architect or engineer
12 contracts;

13 (2) Notwithstanding any other provisions of this chapter, no construction manager may
14 contract to perform actual construction on the project, except as follows:

15 (a) The construction manager may perform general conditions of the construction



1 contract as required by the owner;

2 (b) The construction manager is a construction manager-at-risk and was solicited
3 through a ~~qualification~~ best value based request for proposals method of
4 procurement as provided in § 5-18B-44 and the construction manager-at-risk,
5 for any actual construction contracted by the construction manager-at-risk to
6 be performed on the project, provides payment and performance bonds and
7 competitively bids the work as required by any statute governing bidding and
8 bonding for public improvement projects;

9 (c) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18A-9;
10 or

11 (d) Pursuant to a contract negotiated pursuant to subdivision 5-18A-5(9); and

12 (3) No person, firm, or corporation may act as a construction manager-agent and also as
13 a contractor on any public improvement, except as follows:

14 (a) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18A-9;
15 or

16 (b) Pursuant to a contract negotiated pursuant to subdivision 5-18A-5(9).

17 Section 2. That § 5-18B-44 be amended to read as follows:

18 5-18B-44. Each ~~qualification~~ best value based request for proposals required by subsection
19 5-18B-43(2)(b) to enter into a construction manager-at-risk services contract where the
20 construction manager-at-risk intends to actually perform construction on the project, shall meet
21 the following criteria:

22 (1) The purchasing agency shall, prior to issuing any request for proposals to enter in a
23 construction management services contract, establish and publish procedures for the
24 solicitation and award of such contracts, which procedures shall include the

following:

- (a) The procedures and standards to be used to qualify construction managers;
- (b) The procedures for preparing and submitting competitive sealed proposals;
- (c) The procedures for evaluating proposals;
- (d) ~~The procedures for negotiations between the purchasing agency and those submitting proposals prior to the acceptance of a proposal.~~ The procedures shall contain safeguards to preserve the confidential information and proprietary information supplied by those submitting proposals; and
- (e) The procedures for awarding construction management services contracts;

(2) A request for proposals to enter into a construction management services contract shall contain the following elements:

- (a) The identity of the purchasing agency;
- (b) A description of the proposed public improvement;
- (c) A description of the qualifications the construction manager will be required to have;
- (d) The procedures to be followed for submitting proposals, the criteria for evaluation of a proposal and its relative weight, and procedures for making awards;
- (e) The proposed terms and conditions for the construction management services contract, including a description of the scope of services to be provided;

(3) Notice of any request for proposals shall be advertised in accordance with the provisions of § 5-18A-14;

(4) ~~After obtaining and evaluating proposals, a purchasing agency may accept the proposal it considers the most advantageous to the purchasing agency. Acceptance~~

- 1 ~~of a proposal shall be by written notice to the construction manager submitting the~~
2 ~~accepted proposal, and by simultaneously notifying in writing the other construction~~
3 ~~managers that their proposals were not accepted~~ The award of a best value
4 construction contract shall be made to the responsible offeror whose proposal is
5 determined in writing to be the most advantageous to the state and that represents the
6 best overall value to the state, taking into consideration the price and other evaluation
7 factors set forth in the request for proposals. No other factors or criteria may be
8 evaluated in making the award determination other than those specified in the request
9 for proposals. The contract file maintained by the purchasing agency shall contain the
10 basis on which the award determination was made; and
11 (5) The purchasing agency shall reserve the right to reject any or all proposals submitted.